

21 C.J.S. Courts § 255

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Courts

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VIII. Concurrent and Conflicting Jurisdiction

A. Courts of Same State

1. In General

§ 255. Priority of jurisdiction

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  474, 475(1), 476

Under the "priority of jurisdiction" rule, when two courts have concurrent jurisdiction over the same subject matter and the actions are materially the same, the court in which the suit was first commenced should retain the case.

Where jurisdiction between courts within a state is concurrent, basic principles of judicial administration require¹ that the court which first acquires jurisdiction should retain it to the exclusion of, and without interference from, the other court.² More specifically, under the "priority of jurisdiction"³ or "jurisdictional priority" rule,⁴ when two courts have concurrent jurisdiction over the same subject matter and the actions are materially the same,⁵ the court in which the suit was first commenced should retain the case, and the second court should abstain from exercising its jurisdiction and interfering with the first proceeding.⁶

The principle of priority jurisdiction is also variously referred to as the rule of "dominant jurisdiction,"⁷ "priority of action,"⁸ as well as the "first filed"⁹ or "first to file" rule.¹⁰ The principle is based on interests of fairness to litigants,¹¹ comity¹² between and among the courts of a state,¹³ judicial efficiency,¹⁴ and the need to avoid conflict in the execution of judgments by independent courts.¹⁵ Under the rule, the first court's authority and control over the case continues until the matter is disposed of;¹⁶ and this court is not to be obstructed in the legitimate exercise of its powers by a court of concurrent or coordinate jurisdiction¹⁷ but is subject only to appellate authority.¹⁸

The jurisdictional priority rule presupposes that the first court in which suit is filed is a court of competent jurisdiction.¹⁹ Where the court in which an action is filed is not the proper venue, the court cannot acquire priority jurisdiction over the suit even though it is first filed there.²⁰

Date to determine priority.

Priority of jurisdiction between courts of concurrent jurisdiction is determined by the date when the initial pleading is filed, at least as long as process issues in due course.²¹ The court sitting in the county in which a complaint is first filed obtains jurisdiction rather than the county in which filing and service are first completed, especially in light of provisions stipulating that a civil action is commenced by filing "or" by service of a summons and complaint.²²

Identity of subject matter, parties, and relief.

Generally, it is a condition of operation of the jurisdictional priority rule that claims or causes of action be the same in both cases, and if the second case is not for the same cause of action, nor between the same parties, the former suit will not prevent the latter.²³ In other words, the rule that priority controls the exercise of concurrent jurisdiction applies only when the cases involve the same or substantially similar²⁴ subject matter²⁵ and parties²⁶ and seek the same relief.²⁷

CUMULATIVE SUPPLEMENT

Cases:

Jurisdictional-priority rule did not apply in proceeding on stepfather's petition to adopt children in the probate court, which petition was filed shortly after biological father filed a motion in the domestic-relations court to reestablish parenting time; probate court and domestic-relations court were not courts of concurrent jurisdiction, the proceedings did not involve the same parties, and

they did not involve the same cause of action or present part of the same whole issue. [In re Adoption of M.G.B.-E.](#), 154 Ohio St. 3d 17, 2018-Ohio-1787, 110 N.E.3d 1236 (2018).

The jurisdictional-priority rule is only applicable when there are two cases pending in two different courts of concurrent jurisdiction, and demands the judge in the second case definitively and unambiguously lacks jurisdiction by operation of this rule. [Thomas v. Delgado](#), 2022-Ohio-4235, 201 N.E.3d 1021 (Ohio Ct. App. 3d Dist. Putnam County 2022).

[END OF SUPPLEMENT]

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Footnotes

- 1 Neb.—[Holste v. Burlington Northern R. Co.](#), 256 Neb. 713, 592 N.W.2d 894 (1999).
- 2 Ark.—[Patterson v. Isom](#), 338 Ark. 234, 992 S.W.2d 792 (1999).
Colo.—[Town of Minturn v. Sensible Housing Co., Inc.](#), 2012 CO 23, 273 P.3d 1154 (Colo. 2012).
Neb.—[Holste v. Burlington Northern R. Co.](#), 256 Neb. 713, 592 N.W.2d 894 (1999).
Okla.—[Booth v. McKnight](#), 2003 OK 49, 70 P.3d 855 (Okla. 2003).
Youth court
A chancery court may not exercise jurisdiction over any abused or neglected child, or any proceeding pertaining thereto, over which the youth court may exercise jurisdiction, if there has been a prior proceeding in the youth court concerning that same child.
Miss.—[K.M.K. v. S.L.M. ex rel. J.H.](#), 775 So. 2d 115 (Miss. 2000).
- 3 Miss.—[Braswell v. Ergon Oil Purchasing, Inc.](#), 179 So. 3d 997 (Miss. 2015).
- 4 Ohio—[State ex rel. Dannaher v. Crawford](#), 78 Ohio St. 3d 391, 1997-Ohio-72, 678 N.E.2d 549 (1997).
- 5 Md.—[Vaughn v. Vaughn](#), 146 Md. App. 264, 806 A.2d 787 (2002).
- 6 Md.—[Vaughn v. Vaughn](#), 146 Md. App. 264, 806 A.2d 787 (2002).
Miss.—[Braswell v. Ergon Oil Purchasing, Inc.](#), 179 So. 3d 997 (Miss. 2015).
Vt.—[Barnet Hydro Co. v. Public Service Bd.](#), 174 Vt. 464, 807 A.2d 347 (2002).
Reversible error
In a case in which two courts are given concurrent jurisdiction over particular subject matter, and one of the courts assumes jurisdiction, it is reversible error for the other also to assume jurisdiction.
Wis.—[In re Vairin M.](#), 2002 WI 96, 255 Wis. 2d 137, 647 N.W.2d 208 (2002).

Wrongful death

The first state court properly to take jurisdiction of a wrongful death action will, so long as that action is pending, have exclusive jurisdiction, and any other subsequently filed action for the same death is of no effect.

Miss.—[Long v. McKinney](#), 897 So. 2d 160 (Miss. 2004).

Expected inheritance

To the extent a claim is based on an expected inheritance, the superior court has no jurisdiction over it while probate proceedings are pending.

Ga.—[Julian v. Brooks](#), 269 Ga. 167, 495 S.E.2d 569 (1998).

7 Tex.—[Gonzalez v. Reliant Energy, Inc.](#), 159 S.W.3d 615 (Tex. 2005).

8 Wash.—[Seattle Seahawks, Inc. v. King County](#), 128 Wash. 2d 915, 913 P.2d 375 (1996).

9 Cal.—[Advanced Bionics Corp. v. Medtronic, Inc.](#), 29 Cal. 4th 697, 128 Cal. Rptr. 2d 172, 59 P.3d 231 (2002), as modified, (Mar. 5, 2003).

10 Minn.—[Gavle v. Little Six, Inc.](#), 555 N.W.2d 284 (Minn. 1996).

11 Ind.—[Fackler v. Powell](#), 839 N.E.2d 165 (Ind. 2005).

12 Ark.—[Patterson v. Isom](#), 338 Ark. 234, 992 S.W.2d 792 (1999).

R.I.—[Barone v. O'Connell](#), 785 A.2d 534 (R.I. 2001).

13 Ind.—[Fackler v. Powell](#), 839 N.E.2d 165 (Ind. 2005).

14 Ind.—[Fackler v. Powell](#), 839 N.E.2d 165 (Ind. 2005).

15 Ark.—[First Nat. Bank of DeWitt v. Cruthis](#), 352 Ark. 292, 100 S.W.3d 703 (2003).

Irreconcilable rulings

The objective of jurisdictional priority is to avoid conflicting and perhaps irreconcilable rulings in two cases addressing the same or overlapping issues.

Md.—[Vaughn v. Vaughn](#), 146 Md. App. 264, 806 A.2d 787 (2002).

Perpetual collision

Jurisdictional priority is necessary because any other rule would unavoidably lead to perpetual collision and be productive of most calamitous results.

Ark.—[Patterson v. Isom](#), 338 Ark. 234, 992 S.W.2d 792 (1999).

16 Ark.—[First Nat. Bank of DeWitt v. Cruthis](#), 352 Ark. 292, 100 S.W.3d 703 (2003).

17 Ala.—[Ex parte Liberty Nat. Life Ins. Co.](#), 888 So. 2d 478 (Ala. 2003).

Certification of class

When a later-filed class action is substantially similar to a previously filed class action, the order of the court in the later-filed action certifying the action as a class action is without effect.

Ala.—[Ex parte Harris](#), 711 So. 2d 467 (Ala. 1998).

18 Ala.—[Ex parte C.L.C.](#), 897 So. 2d 234 (Ala. 2004).

19 Neb.—[Molczyk v. Molczyk](#), 285 Neb. 96, 825 N.W.2d 435 (2013).

The jurisdictional priority rule, under which a court whose power is first invoked acquires exclusive jurisdiction to adjudicate the whole issue, does not apply if the first action terminates before the second action commences; the rule requires that there be two cases pending.

Ohio—*State ex rel. Vanni v. McMonagle*, 137 Ohio St. 3d 568, 2013-Ohio-5187, 2 N.E.3d 243 (2013).

20 Tex.—*Gonzalez v. Reliant Energy, Inc.*, 159 S.W.3d 615 (Tex. 2005).

21 Miss.—*Scruggs, Millette, Bozeman & Dent, P.A. v. Merkel & Cocke, P.A.*, 804 So. 2d 1000 (Miss. 2001).

22 Wash.—*Seattle Seahawks, Inc. v. King County*, 128 Wash. 2d 915, 913 P.2d 375 (1996).

23 Ohio—*State ex rel. Dannaher v. Crawford*, 78 Ohio St. 3d 391, 1997-Ohio-72, 678 N.E.2d 549 (1997).

24 Ala.—*Ex parte BOC Group, Inc.*, 823 So. 2d 1270 (Ala. 2001).

25 Colo.—*State for Use of Dept. of Corrections v. Pena*, 911 P.2d 48 (Colo. 1996).

Ind.—*Fackler v. Powell*, 839 N.E.2d 165 (Ind. 2005).

Neb.—*Charleen J. v. Blake O.*, 289 Neb. 454, 855 N.W.2d 587 (2014).

26 Colo.—*State for Use of Dept. of Corrections v. Pena*, 911 P.2d 48 (Colo. 1996).

Ind.—*Fackler v. Powell*, 839 N.E.2d 165 (Ind. 2005).

Miss.—*Copiah Medical Associates v. Mississippi Baptist Health Systems*, 898 So. 2d 656 (Miss. 2005).

27 Ind.—*Fackler v. Powell*, 839 N.E.2d 165 (Ind. 2005).

Miss.—*Copiah Medical Associates v. Mississippi Baptist Health Systems*, 898 So. 2d 656 (Miss. 2005).

Vt.—*Secretary, Agency of Natural Resources v. Upper Valley Regional Landfill Corp.*, 167 Vt. 228, 705 A.2d 1001 (1997).